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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/814,485	03/31/2004	Michael D. Kotzin	CS23908RL	7761
20280 7590 07/15/2008				
MOTOROLA INC				
600 NORTH US HIGHWAY 45				
W4 - 39Q				
LIBERTYVILLE, IL 60048-5343				
EXAMINER				
MA, CALVIN				
ART UNIT		PAPER NUMBER		
2629				
NOTIFICATION DATE		DELIVERY MODE		
07/15/2008		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DOCKETING.LIBERTYVILLE@MOTOROLA.COM

ADB035@Motorola.com

**Advisory Action  
Before the Filing of an Appeal Brief**

**Application No.**

10/814,485

**Applicant(s)**

KOTZIN ET AL.

**Examiner**

CALVIN C. MA

**Art Unit**

2629

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED March 25, 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1-11.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/Chanh Nguyen/  
Supervisory Patent Examiner, Art Unit 2629

/Calvin C Ma/  
Examiner, Art Unit 2629

Continuation of 11, does NOT place the application in condition for allowance because: The applicant argues with regard to claims 1-16 and 20-21, that Nykanen fails to teach "determining a virtual physical representation to be output in response to the execution of the data management function". The examiner disagrees with this assertion, because the recitation of virtual physical representation is broad enough to read on any type of representation made in an electronically stored form as all physical entity when stored electronically is a virtual representation of that physical entity. Since the recitation of data management function can read on an electronic processor read and write function which enables the wireless device 100 in Nykanen, the "Health/Fatigue" state that the device recognizes is in fact a virtual physical representation, as it represents the user's physical state of being in a virtual way. As this action is enabled by the processor of the wireless device processing input data. After detecting this physical state of being Healthy or Fatigued the alarm indicator alerts the user. In this way the output is based on the virtual physical representation of well-being of the user, where the alarm indicates the lack of well-being; therefore, the limitation of the said claim is met by Nykanen.

The applicant argues the response, with regard to claims 17-19, that Nykanen in view of Steele fails to teach or suggest a "virtual physical representation control module ... in response to a signal from the context sensor" and "virtual representation ... presented on the display". The examiner disagrees with the above assertion. Nykanen in view of Steele does indeed teach the said limitation because Steele teaches a graphical representation of the user feedback in place of Nykanen audio feedback. As to the virtual physical representation control module Steele teaches a Macintosh computer which has a graphic control system that outputs the image (virtual physical representation) to the monitor, this system works together with the CPU of the computer to display the image, therefore the combination of Nykanen and Steele teaches an electronic system that utilized graphical display of the Health/Fatigue state to the user, meeting the claimed limitations. .